IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 321 OF 2007

Atul Vasant Joshi ..Applicant
V/s
State of Maharashtra ..Respondent

WITH

CRIMINAL APPLICATION NO. 322 OF 2007

Arun Anant Pathak ..Applicant

V/s
State of Maharashtra ..Respondent

Mr. Rajiv Patil with Mr. V.V. Purwant, Advocates for the applicants.

Mr. Y.S.Shinde,APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 14TH FEBRUARY, 2007.

P.C.

. Heard Mr. Patil, learned Counsel for the applicants and Mr.Shinde, APP for the State. The applicants, who are professional engineers, seek anticipatory bail in Crime NO. 15/2007 registered at Jail Road Police Station Solapur for the offences punishable under Section 304 and 427 r/w section 34 Indian Penal Code.

2. Prosecution case, in brief, is that one Mahadwar

to approach the temple of Prabhakar Swami Maharaj was under construction for about 5 or 6 months. The applicants were the consulting engineers in charge for the design and execution of the work. For the purpose of construction of the arch of the magnificent Mahadwar over two pillars, a bridge was constructed and after completion of Mahadwar, the said bridge was to be removed. On 9/1/2007, when the said bridge was being removed, proper care was not taken and knowing that if it falls it would cause death or injury to people below, a jerk was given by the crane operator and the said bridge abruptly fell down causing death of one person and injuries to seven others. According to the prosecution, because the applicants were aware about the possibility of death and injuries due to the fall of bridge and still they had not taken care, it would be an offence of culpable homicide punishable under section 304 of Indian Penal Code and hence the offence came to be registered under that section. It is contended on behalf of the applicants that it was a sheer accident, which had taken place due to a jerk given by the crane operator and at the most it may be the case under section 304A against that person.

3. After perusal of the police record, it is difficult to understand how the offence of culpable homicide punishable under section 304 IPC could be registered. Prima facie it appears to be the case which could be registered under section 304A. It could be said that due to rash and negligent act of some persons the incident occurred resulting in death of one person and injuries several persons. Offence under section 304A as well as under section 427 IPC is bailable but while the offence under section 304 IPC non bailable. Thus the applicants, who would be otherwise entitled to be released on bail, one denied that right by applying grave charge under section 304 IPC.

4. In view of above circumstances, I find that the applicants deserve to be granted anticipatory bail.

5. In the event of arrest in Crime No.15/2007, registered at Jail Road Police Station Solapur, the applicants shall be released on bail on their executing P.R. bond of Rs. 5000/- each with surety in like amount with conditions that they shall not tamper with the prosecution evidence and make themselves available to the police as and when required for the purpose of

investigation.

(J.H. BHATIA, J.)